the only evidence in the case being that beer was sold. *Held,* (DAVIDSON, J. dissenting) under ACTS 1ST CALLED SESS. 31ST LEG. c. 17, defining intoxicating liquors as including fermented liquor the court will take judicial notice that beer is an intoxicating liquor. *Moreno* v. *State* (Tex. Cr. R. 1912), 143 S. W. 156.

The opinion in this case overrules a long line of decisions by the Texas Court of Criminal Appeals holding that courts will not take judicial notice that beer is an intoxicating liquor. *Cassens* v. *State,* 48 Tex. Cr. R. 186; *Sullivan* v. *State,* 48 Tex. Cr. R. 201; *Potts* v. *State,* 50 Tex. Cr. R. 368, 97 S. W. 477, 7 L. R. A. (N. S.) 194, 123 Am. St. Rep. 847; *Schwulst* v. *State,* 52 Tex. Cr. R. 426. This court, in accord with the majority, has followed the rule that courts will take judicial notice of the intoxicating properties of well known liquors, such as whiskey and wine. *Smith* v. *State,* 56 Tex. Cr. R. 501; *The Kawailani,* 128 Fed. 879; *Nussbaumer* v. *State,* 54 Fla. 87; *State* v. *York,* 74 N. H. 125. And the Texas Court of Civil Appeals has always held with the many courts that take judicial notice that beer is an intoxicating malt liquor. *Maier* v. *State,* 2 Tex. Civ. App. 296; *White* v. *Manning,* 46 Tex. Civ. App. 298; *Briffitt* v. *State,* 58 Wis. 39; *Myers* v. *State,* 93 Ind. 251, (overruling *Kurz* v. *State,* 79 Ind. 488, and a long line of preceding decisions), *Peterson* v. *State,* 63 Neb. 251; *Vines* v. *State* (Wyo. 1911), 116 Pac. 1013; BLACK, INTOXICATING LIQUORS, § 17, 7 ENCYC. OF EVIDENCE, 675, 676. Many courts follow the doctrine so lately rejected by the Texas court and hold that in the absence of proof the court will not take judicial notice that beer is an intoxicating malt liquor. *Netso* v. *State,* 24 Fla. 363, *DuVall* v. *City Council,* 115 Ga. 813; *Hansberg* v. *People,* 120 Ill. 21; *Blatz* v. *Rohrbach,* 116 N.Y. 450; *State* v *Beswick,* 13 R.I. 211; *State* v. *Sioux Falls Brewing Co.,* 5 S. D. 39. In the cases cited above the rulings are made upon the use of the word beer unqualified. The cases must be distinguished from those holding that the court will take judicial notice that lager beer is intoxicating. *State* v. *Church,* 6 S. D. 89; *State* v. *Giersch,* 98 N. C. 720. *Contra, Smith* v. *State,* 113 Ga. 758; *People* v. *Hart,* 24 How. Pr. 289; *People* v. *Schewe,* 29 Hun 122; or where the statute expressly includes all malt liquors, *State* v. *Morehead,* 22 R. I. 272; or where lager beer is enumerated among the intoxicating liquors the traffic in which is regulated or prohibited. *Com.* v. *Blos,* 116 Mass. 56; *Murphy* v. *Montclair,* 39 N. J. L. 673.

GARNISHMENT—IMPEACHING AFFIDAVIT—DISSOLUTION.—In an action on book account an affidavit of garnishment was filed alleging that the defendant had no property liable to execution to satisfy the plaintiff's demand. The defendant moved to dissolve the garnishment, supporting the motion by affidavits, and the plaintiff filed affidavits supporting the garnishment. Upon trial the court found for the defendant and vacated the garnishment. *Held,* that the garnishment was properly dismissed. *Hockaday & Co.* v. *King* (Okla. 1912), 120 Pac. 565.

The general rule is, "Though the affidavit is not conclusive, either upon the defendant or the garnishee, yet if the garnishment should be dismissed for any reason, as that the defendant has property liable to execution sufficient to satisfy any judgment that may be recovered against him, such facts

must be proved by the party seeking the dismissal." ROOD, GARNISHMENT, § 284. *Orton* v. *Noonan,* 27 Wis. 572; *German-American Bank* v. *Butler-Mueller Co.,* 87 Wis. 467, 58 N. W. 746. The proper practice is for the defendant or garnishee to make and file in court affidavits of the facts upon which he depends to have the proceedings dismissed, and then to move the court to dismiss the garnishment. *Orton* v. *Noonan,* 27 Wis. 572. In the main case the counsel for the plaintiff argued that, since garnishment proceedings are statutory and in derogation of the common law, the statute must be strictly followed in every particular, and since no provision existed providing a procedure where the averments in the garnishment affidavit were controverted, the court was without jurisdiction to try or determine the issue. The court held, however, that inasmuch as proceedings in garnishment are statutory, authority for their issuance must be found in the statute, and in a case where the defendant has no property subject to execution, garnishment is not authorized, and the issuance of the affidavit or other process is an abuse of process, which any court has inherent power to correct, and that the dismissal of the garnishment is merely a remedy for the abuse of process in obtaining it. *Thoen* v. *Harnstrom,* 98 Wis. 231, 73 N. W. 1011; *Chanute* v. *Martin,* 25 Ill. 63; *Noble* v. *Bates,* 44 Mich. 193. A recent case holding that garnishment may be discharged when the writ is illegally and improperly issued is *Sully* v. *Bushell,* 50 Wash. 389, 97 Pac. 445.

INFANTS—TORTS—BREACH OF WARRANTY.—Defendant, an infant, sold the plaintiff a horse with a warranty of soundness which he knew was false. Defendant refused to take back the horse or return the purchase price, for which plaintiff then sued. *Held,* the pleadings alleged only a breach of warranty, for which an infant is not liable. *Collins* v. *Gifford* (N. Y. 1911), 96 N. E. 721.

With the exception of one jurisdiction, see *Word* v. *Vance,* 1 Nott & McCord 197, 9 Am. Dec. 683, the courts seem to agree in holding infancy a good defense for false warranty of property sold. BURDICK, TORTS, (Ed. 2), p. 122; note 57 L. R. A. 680; KALES, CASES, PERSONS, p. 323. This is but a necessary application of the general rule of non-liability of infants for their contracts. *West* v. *Moore,* 14 Vt. 447. The distinction is nice between false representations constituting a warranty and misleading statements of age to induce the making of a contract. In the latter case the doctrine of estoppel frequently is applied in equity. See 9 MICH. L. REV. 72. The decision in the leading case follows closely the language in *Studwell* v. *Shapter,* 54 N. Y. 249, and also distinguishes *Hewitt* v. *Warren,* 10 Hun 560, the *obiter dictum* of which has sometimes led to confuse a proper conception of the New York doctrine. Yet the exact position of the New York court seems not rigidly or clearly established even by this opinion.

INTERSTATE COMMERCE — STREET RAILWAYS. — The Interstate Commerce Commission regulated certain rates on the interstate passenger traffic of plaintiff, which is an electric interurban street railroad company carrying passengers in Omaha, Nebraska, in Council Bluffs, Iowa, and between those cities. The company objected to the regulation on the ground that the Commission had no jurisdiction, because the Interstate Commerce Act of 1887, and its subse-